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FEB 07 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

No. 04-0775

GREGORY A. LARSON,
Bar No. 010340

RESPONDENT.

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

A Probable Cause Order was filed on June 20, 2005 and a single-count Complaint was filed on September 1, 2005. Respondent filed his Answer on September 29, 2005. The Settlement Officer scheduled a settlement conference but, prior to the settlement conference, the State Bar of Arizona ("State Bar") filed a Notice of Settlement and Request to Vacate Settlement Conference. That request was granted and the parties later filed a Tender of Admissions and Agreement for Discipline by Consent ("Tender") and a Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent ("Joint Memo"). No hearing has been held in this matter.

FINDINGS OF FACT

1. At all relevant times, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on November 9, 1985.

2. On April 21, 2004, check number 1284 in the amount of \$500.00 attempted to pay against Respondent's Bank of America client trust account (the "Account") when the balance in the Account at the time was negative \$1,218.84. The bank returned the check, and did not charge a non-sufficient funds fee, leaving the account with a negative \$1,218.84 balance.

3. On May 6, 2004, the State Bar received an insufficient funds notice with regard to the Account.

1 4. On May 18, 2004, the State Bar's staff examiner sent Respondent a copy of the
2 overdraft notice and requested an explanation regarding the overdraft on the Account.

3 5. Respondent explained that the overdraft was the result of an error by his office
4 staff when an extra digit was typed on a draft deposited into the Account. Because of the
5 typographical error, the bank determined that the "account was not found" and, since the
6 deposit was not made into the Account, an overdraft resulted. Once the error was discovered,
7 the check was deposited with the correct information for the Account and the funds cleared.

8 6. Respondent was asked for additional information several different times as each
9 successive disclosure of Account records generated new questions. For example, the State Bar
10 staff examiner noted that it appeared that there should have been enough funds in the Account
11 to honor the \$500.00 disbursement even without the deposit that was the subject of the
12 typographical error.

13 7. During the review, the State Bar staff examiner determined that there had been
14 several insufficient funds notices issued with regard to the Account that had not been reported
15 to the State Bar.

16 8. The State Bar requested additional records from Respondent but, due to his
17 inability to provide the requested records, his bank account records were subpoenaed.

18 9. Review of the file and the subpoenaed bank records revealed many violations.

19 10. Respondent failed to properly safeguard client funds and failed to exercise due
20 professional care in the performance of his duties in several ways:

21 a. A portion (\$2,251.00) of the deposit made on April 19, 2004 was rejected due to
22 the Account not being "found" by the bank. The deposit was not credited to the
23 Account before the corresponding disbursements paid against the Account,
24 subjecting other client money in the Account to potential misappropriation.

25 b. The Account records reflect five separate occasions when there were insufficient
26 funds to cover checks written against it.

27 c. The subpoenaed bank records revealed an additional occurrence of insufficient
funds, when the balance in the Account was negative \$156.94. The bank did not
report this occurrence to the State Bar as required by Rule 44(d), Ariz. R. S. Ct.

1 11. Respondent did not submit individual client ledgers for the period of March 1,
2 2003 through March 31, 2004 for examination, so the staff examiner was unable to determine
3 whether unearned client funds were compromised while on deposit in the Account during the
4 period of review.

5 12. Respondent failed to maintain timely and complete client trust account records
6 or maintain backup records and failed to maintain proper internal controls within his office.
7 The individual client ledgers that were provided to the State Bar did not reflect all transactions.
8 Respondent failed to retain a duplicate deposit slip or the equivalent for each deposit that was
9 sufficiently detailed to identify each item. If this matter were to proceed to hearing,
10 Respondent would testify that, while he did keep client trust account ledgers, he was unable to
11 produce them because the person from whom he subleased his office was locked out of the
12 building by that person's landlord and Respondent's records disappeared. For purposes of this
13 agreement, the State Bar does not contest Respondent's explanation in this regard.

14 13. Respondent failed to make or cause to be made a monthly three-way
15 reconciliation of the client ledgers, the Account general ledger or register, and the Account
16 bank statement.

17 14. Respondent failed to maintain a pooled interest-bearing account as required by
18 Rule 44. Respondent's trust account is registered as "IOLTA" and "Arizona Bar Foundation
19 Trust." The bank statements, however, do not reflect interest being paid to the Arizona
20 Foundation for Legal Services and Education.

21 CONDITIONAL ADMISSIONS

22 Respondent conditionally admits that his conduct, as set forth above, violated Rule 42,
23 Ariz. R. S. Ct., ER 1.15 and Rules 43 and 44.

24 ABA STANDARDS

25 The American Bar Association's *Standards for Imposing Lawyer Sanctions*
26 ("*Standards*") lists the following factors to consider in imposing the appropriate sanction:
27 (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by

1 the lawyer's misconduct and (4) the existence of aggravating or mitigating circumstances.
2 ABA *Standard* 3.0.

3 The parties agree that *Standard* 4.0 (Violations of Duties Owed to Clients) is the
4 standard most applicable in this matter. A review of ABA *Standard* 4.1 (Failure to Preserve
5 the Client's Property) indicates that reprimand (censure in Arizona) is the presumptive sanction
6 for Respondent's misconduct. *Standard* 4.13 specifically provides:

7 Reprimand is generally appropriate when a lawyer is negligent in
8 dealing with client property and causes injury or potential injury to a
client.

9 Although Respondent violated his fiduciary duty with regard to the Account, it was not
10 intentional. Rather, Respondent's conduct was negligent and there is no evidence that any
11 clients were harmed due to Respondent's failure to properly maintain the Account. However,
12 there was the potential for injury.

13 AGGRAVATING AND MITIGATING FACTORS

14 This Hearing Officer then considered aggravating and mitigating factors pursuant to
15 *Standards* 9.22 and 9.32, respectively.

16 This Hearing Officer agrees with the parties that there are two applicable aggravating
17 factors in this matter:

18 (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to
19 comply with rules or orders of the disciplinary agency; and

20 (i) substantial experience in the practice of law.

21 This Hearing Officer also agrees with the parties that one factor is present in mitigation:

22 (b) absence of a dishonest or selfish motive.

23 PROPORTIONALITY REVIEW

24 To have an effective system of professional sanctions, there must be internal
25 consistency and it is appropriate to examine sanctions imposed in cases that are factually
26 similar. *In re Peasley*, 208 Ariz. 27, 29, 90 P.3d 770, 772 (2004). However, the discipline in
27 each case must be tailored to the individual case, as neither perfection nor absolute uniformity

1 can be achieved. *Id.* at 35, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600,
2 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

3 The cases below demonstrate that censure and probation is an appropriate discipline in
4 this case.

5 In *In re Vingelli*, Supreme Court No. SB-03-0161-D, the lawyer received a censure and
6 was placed on probation for two years for failing to safeguard client funds received after a
7 settlement in a personal injury case and allowing his trust account balance to drop below the
8 amount that should have been in held in trust. Vingelli's clients did not promptly receive funds
9 to which they were entitled. Attorney Vingelli also failed to maintain complete trust account
10 records and exercise due professional care over the trust accounts.

11 In *In re of Glanville*, Supreme Court No. SB-04-0007-D, the lawyer received a censure
12 with only one year probation after his trust account became overdrawn, compromising client
13 funds. Glanville also co-mingled earned funds and personal funds in his trust account.

14 In *In re Hall*, Supreme Court No. SB-02-0122-D, the lawyer received a censure and one
15 year of probation after he received multiple overdraft notices regarding his trust account. Hall
16 failed to adequately monitor his clients' funds which were on deposit in his trust account,
17 thereby resulting in the overdrafts. Hall also failed to maintain sufficient records for his trust
18 account and failed to establish internal controls to properly monitor his clients' funds.

19 Finally, in *In re Smith*, Supreme Court No. B-02-0121-D, the lawyer received a censure
20 upon using his trust account as an operating account, commingling personal funds and failing
21 to adequately safeguard client funds. There was one aggravating factor and four mitigating
22 factors. Smith did not receive probation as he had taken a position with a public agency and, as
23 such, was not then handling a trust account.

24 This case is mostly like *In re Hall* because of the numerous overdrafts and the failure to
25 keep appropriate records, which made it impossible for the State Bar's records examiner to
26 determine whether client funds were misappropriated. A longer period of probation is not
27 necessary as Respondent works for a firm and does not have responsibility for handling the

1 firm's trust account. Therefore, the presumptive sanction of censure is warranted along with a
2 short term of probation so that Respondent may attend the State Bar's Trust Account Ethics
3 Enhancement Program ("TAEPP").

4 RECOMMENDATION

5 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public
6 and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320
7 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the
8 administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another
9 purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20,
10 29, 881 P.2d 352, 361 (1994).

11 In imposing discipline, it is appropriate to consider the facts of each case, the *Standards*
12 and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz.
13 283, 286, 872 P.2d 1235, 1238 (1994).

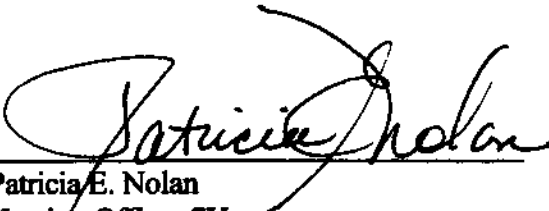
14 Upon consideration of the facts, application of the *Standards*, including aggravating and
15 mitigating factors, and a proportionality analysis, this Hearing Officer recommends acceptance
16 of the Tender and the Joint Memo, which provide for the following:

17 1. Respondent should receive a censure.
18 2. Respondent should be placed on probation for a period of six months, effective
19 upon the filing of the judgment and order. The terms of probation are (a) that Respondent
20 attend and complete the TAEPP and (b) that Respondent pay the costs and expenses incurred in
21 this disciplinary proceeding.

22 3. In the event that Respondent fails to comply with the foregoing conditions, and
23 the State Bar receives information regarding such failure, bar counsel shall file with the
24 Hearing Officer a Notice of Non-Compliance pursuant to Rule 60(a)5, Ariz. R. S. Ct. In such
25 event, the Hearing Officer shall conduct a hearing within 30 days after receipt of said notice to
26 determine whether the terms of probation have been violated and whether additional sanctions
27 should be imposed. At such hearing, the burden of proof shall be on the State Bar to prove non-

1 compliance by clear and convincing evidence.

2 DATED this 7th day of February, 2006.

3
4 
5 Patricia E. Nolan
Hearing Officer 7Y

6 ORIGINAL filed with the Disciplinary Clerk
7 this 7th day of February, 2006.

8 COPY of the foregoing was mailed
9 this 7th day of February, 2006 to:

10 Gregory A. Larson
11 *Wilcox & Wilcox, P.C.*
12 3030 N. Central Avenue, Suite 705
13 Phoenix, AZ 85012-2714

14 Gregory A. Larson
15 P. O. Box 12076
16 Tempe, AZ 85284

17 Shauna R. Miller
18 Senior Bar Counsel
19 State Bar of Arizona
20 4201 N. 24th Street, Suite 200
21 Phoenix, AZ 85016-6288

22 By: 
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